U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE M. PACHECO and DEPARTMENT OF AGRICULTURE, FOOD SAFETY & INSPECTION SERVICE, Siler City, NC

Docket No. 01-1701; Submitted on the Record;
Issued April 5, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review of the merits.

Appellant, a 41-year-old food inspector, filed an occupational disease claim on March 1, 1999, alleging that she was experiencing pain in her left wrist, elbow and shoulder and her right ring and little finger, elbow and shoulder, all of which emanated to her neck. She stated that this condition was caused by factors of her employment and that she first became aware of it on June 8, 1998. Appellant stopped working on March 1, 1999 and has not returned to work since that date.

On June 1, 1999 the Office accepted appellant's claim for cervical subluxation.

In order to determine whether appellant currently suffered from residuals of her accepted cervical condition, the Office referred appellant for an examination with Dr. Tej Pal S. Dhillon, a Board-certified orthopedic surgeon. In a report dated June 24, 1999, Dr. Dhillon, after reviewing the medical records, the statement of accepted facts and stating findings on examination, advised that appellant had a normal cervical spine with no clinical or radiological evidence of problems. He stated that appellant had no residual objective or subjective findings associated with her work factors and did not require additional treatment. Dr. Dhillon stated that appellant did not require any work restrictions based on her neck condition and indicated that she could work an eight-hour job.

On July 9, 1999 the Office issued a proposed notice of termination based on Dr. Dhillon's opinion that appellant had no residuals or continuing disability causally related to her accepted cervical condition and that she was able to return to work without restrictions. The Office informed appellant that she had 30 days in which to submit additional legal argument or medical evidence in opposition to the proposed termination. Appellant submitted a July 30, 1999 letter from Dr. Colin Fraser, a family practitioner, who stated that he had been treating appellant for chronic right shoulder pain and that a magnetic resonance imaging (MRI) scan indicated

degeneration of the supraspinatus. Dr. Frazier did not indicate, however, whether appellant still had residual disability stemming from her accepted cervical condition. Appellant also submitted an August 2, 1999 summary report from Dr. Kenneth M. Lommel, a chiropractor, who stated that she still required treatment for the severe pain in her shoulders and arms, without which she found it very difficult to perform her job.

By decision dated September 9, 1999, the Office found that appellant no longer had any condition, disability or residuals causally related to her employment. The Office found that the weight of the medical evidence, as represented by Dr. Dhillon's referral opinion, established that her employment-related cervical condition had resolved.

By letter dated August 7, 2000, appellant's attorney requested reconsideration. Appellant submitted a July 3, 2000 report from Dr. Jeffrey C. Beane, a specialist in orthopedic surgery and an August 9, 2000 report from Dr. Lommel. Dr. Beane stated:

> "I feel that [appellant's] shoulder complaints are related to a rotator cuff arthropathy. I feel this is related to the repetitive work with her arms and shoulders as poultry inspector. I feel it is an occupationally related, cumulative repetitive injury. I do not feel it is related to her cervical subluxation. Her MRI [scan] indicates tend[i]nitis of the rotator cuff that is consistent with this [condition]."

In his August 9, 2000 report, Dr. Lommel stated findings based on a December 13, 1999 examination of appellant, noting that she had complaints of sharp and hot pain in her neck and across the top of her right shoulder, which usually commenced within a few hours after she completed her work as a poultry inspector. Dr. Lommel diagnosed cervical subluxation with cervical paresthesia and myofacsitis of the cervical paraspinal and upper trapizius musculature. He stated:

> "It is apparent that [appellant's] ongoing repetitive activity involved in her work as a poultry inspector has caused an aggravation of her previous cervical subluxation and strain. [Appellant] received [seven] treatments during December 1999 with some easing of her symptom level[.] [H]owever, she did continue to experience reoccurring aggravation involving neck stiffness, pain from her neck into the upper back during the course of her workday activities. In my opinion, this condition will be a source of reoccurring pain as long as she continues in working her current job duties and recommend she find work activity that does not require her to utilize repetitive use of her arms over a line or overhead in particular."

By decision dated March 29, 2001, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that the Office acted within its discretion in refusing to reopen appellant's case for further review of the merits.

Under section 8128(a) of the Federal Employees' Compensation Act and its implementing regulation, 20 C.F.R. § 10.607, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[1] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[2]

In this case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. Dr. Beane's July 3, 2000 report is not relevant and pertinent to the issue of termination as he diagnosed rotator cuff tendinitis, a new condition not accepted by the Office in this case.[3] The accepted condition due to the March 1, 1999 claim was cervical subluxation. The report from Dr. Lommel does not constitute new and relevant evidence for the Office to review. He noted results of a December 1999 examination indicating injury due to ongoing repetitive activities aggravating her condition. This report is not relevant to the issue of termination as it addresses a new injury arising in December 1999 due to new employment exposures. Appellant's reconsideration request failed to show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally contended that she was still experiencing residuals from his work-related cervical condition which rendered her totally disabled from work, she failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.[4]

[1] 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

[2] *Howard A. Williams*, 45 ECAB 853 (1994).

[3] The record indicates that appellant did file a claim on September 24, 2000 for injury to her right arm and shoulder, which was accepted by the Office for rotator cuff sprain.

[4] On appeal appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501(c).

The decision of the Office of Workers' Compensation Programs dated March 29, 2001 is hereby affirmed.

Dated, Washington, DC
April 5, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member